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Federal Communications Commission
Office of Secretary

**Before the
Federal Communications Commission
Washington, D.C. 20054**

In the Matter of	)	
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Ameritech Operating Companies' New Expanded Interconnection Tariff	)	CC Docket No. 96-185
	)	
	)	

OPPOSITION OF WORLDCOM, INC. TO DIRECT CASE

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WorldCom, Inc. ("WorldCom"), by undersigned counsel, respectfully submits this Opposition in accordance with paragraph 110 of the order issued by the Federal Communications Commission ("Commission") on March 11, 1997 in the above-captioned proceeding.[1] WorldCom opposes the Direct Case filed by the Ameritech Operating Companies ("Ameritech") in response to the Commission's Investigation Order.

WorldCom urges the Commission to carefully scrutinize Ameritech's tariff in light of the fact that the recurring charges imposed in the tariff are generally higher than those imposed by any of the other Bell Operating Companies. As discussed below, some of the rates and terms set forth for physical collocation in the Ameritech tariff are unjustifiable, and Ameritech's Direct Case cannot address the flaws underlying this tariff filing. Therefore, WorldCom asks that the Commission determine that certain rates, terms and conditions in the tariff are unjust and unreasonable; order Ameritech to revise its tariff to more properly reflect the costs directly associated with the physical

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[1] *Ameritech Operating Companies' New Expanded Interconnection Tariff, Bell Atlantic Telephone Companies' New Expanded Interconnection Tariff, Puerto Rico Telephone Company's New Expanded Interconnection Tariff*, CC Docket Nos. 96-185, 96-165, and 96-160, Order Designating Issues for Investigation (rel. March 11, 1997) ("Investigation Order").

collocation services provided by Ameritech; and order Ameritech to pay refunds pursuant to the terms of the accounting order previously imposed in this docket.[2]

Introduction and Summary

WorldCom, a leading provider of interexchange services, recently merged with MFS Communications Company, Inc. ("MFS"). Before the merger, WorldCom was the fourth largest provider of interexchange services, offering both retail long distance services to end users and wholesale network services to carriers, while MFS Communications was the nation's leading facilities-based competitive local exchange carrier. As a result of the merger, WorldCom is uniquely positioned to bring a wide range of choices for telecommunications and information services to customers in Ameritech's service territory. However, WorldCom's and other carriers' ability to provide competing local exchange and full service offerings depends on their ability to successfully interconnect on reasonable and nondiscriminatory terms with the facilities of the incumbent local exchange carriers ("ILECs").

Ameritech filed its expanded interconnection tariff on July 2, 1996. Shortly thereafter, MFS, AT&T, and MCI filed petitions to suspend Ameritech's filing, arguing that the rates and terms in the tariff raised questions of lawfulness and did not comply with the Telecommunications Act of 1996 ("1996 Act"). On August 29, 1996, the Commission suspended Ameritech's tariff and announced an investigation into the filing.[3] The Direct Case filed by Ameritech in response to the Commission's recent Investigation Order attempts to provide the Commission with the rationale and

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2 *See Investigation of Ameritech's New Expanded Interconnection Offerings*, CC Docket No. 96-185, Order, 11 FCC Rcd 10177, 10182 (1996).

3 *Id.*

underlying cost support for many provisions in the tariff.

The Direct Case, however, does not sufficiently address many of the significant flaws in Ameritech's tariff. Most significantly, WorldCom urges the Commission to order Ameritech to eliminate duplicative overhead costs added by Ameritech through its use of a fully-distributed cost ("FDC") factor in setting the rates for certain physical collocation services. In addition to this excessive overhead recovery, WorldCom contends that Ameritech's rates associated with DC power service and Ameritech's dual riser costs are significantly overstated. WorldCom also requests that the Commission more closely scrutinize Ameritech's inclusion of income tax liability in its cost studies, particularly as Ameritech applies an overhead loading factor to its income tax. Finally, WorldCom urges the Commission to reject Ameritech's defense of its limitation of liability tariff provisions and direct the ILEC to file revised provisions that do not place such a burden on competing collocators.

I. AMERITECH'S APPLICATION OF FULLY-DISTRIBUTED COST FACTORS TO ITS DIRECT COSTS LEADS TO OVER-RECOVERY OF OVERHEAD COSTS

Ameritech's cost studies supporting every one of the rate elements in its tariff incorporate an overhead loading factor of 1.58 (or in some cases 1.65).[4] Curiously, however, Ameritech's lengthy Direct Case appears to contain no explanation, justification, or derivation of this FDC overhead factor. Although the Commission has permitted incumbent LECs to recover overhead costs in their expanded interconnection rates, it has placed the burden on the LEC to demonstrate

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[4] The higher factor appears to incorporate an allowance for Gross Receipts Taxes, which are itemized separately in some cost studies but not others. Moreover, in some studies Ameritech explicitly applies the overhead loading factor in determining a charge, while in other studies the overhead loading factor must be implied from the cost to price ratios provided by Ameritech.

the reasonableness of its proposed overhead cost recovery.[5] In particular, Ameritech must justify its overhead loadings on expanded interconnection services if it recovers a greater share of overheads in charges for these services than it does in charges for comparable access services, such as the more-competitive DS1 and DS3 services.[6] Ameritech has failed to carry this burden.

In addition, Ameritech has attempted in several instances to double-recover its overhead costs by loading up its "direct cost" calculations with items that more properly should be treated as overhead. A blatant example of this over-recovery of overhead arises in Ameritech's detailed discussion of its central office floor space charge. In its interconnection tariff, Ameritech proposes charging each collocator $1050.85 per 100 square feet of central office floor space used to house the collocator's transmission node.[7] In paragraphs 43 and 44 of the Investigation Order, the Commission directs Ameritech to explain the methodology by which it developed the total central office collocation floor area required to provide each transmission node. In response, Ameritech states that the floor space charge is "based on a nominal 100 [square foot] transmission node space in a central office environment."[8] However, Ameritech adds that in order to provide 100 square feet of *net* usable floor space, it will need to account for 150 square feet of gross central office space to

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[5] *See e.g., Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rcd 5154, 5189 (1994); *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Switched Access and Switched Transport*, CC Docket No. 94-97, Phase I, Report and Order, 10 FCC Rcd 6375, 6376 (1995); Investigation Order, at ¶66.

[6] *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rcd 5154, 5189 (1994); Investigation Order, at ¶66.

[7] Ameritech Tariff F.C.C. No.2, §16.5(1)(A).

[8] Direct Case of Ameritech, at 7.

accommodate dedicated access (walkways) and to account for building obstructions.[9]

Ameritech continues by stating that this approximation of 150 square feet of gross space is still not enough to provide collocators with 100 square feet of space in the central office equipment room. Instead, Ameritech states that it will need another 50 square feet as a "support space" factor for the 100 square feet of equipment room space.[10] In total, Ameritech claims that it will need to account for 200 square feet of space simply to provide 100 square feet of actual collocation space to the interconnector. Ameritech therefore calculates its monthly $1050.85 per 100 square feet charge based upon the direct costs of 200 square feet of space in its central office for each collocator in addition to the overhead loadings that it applies to this and other rate elements.

Ameritech's claim that its cost methodology is consistent with commercial leasing practices is misleading at best. Although commercial landlords often do allocate non-usable space among their tenants for purposes of recovering real estate taxes, maintenance costs, and other overhead expenses, they do not mark up the rent with an additional "overhead loading factor" to recover the same costs again, as Ameritech seems to be doing.[11] Unless Ameritech uses the same methodology in computing the direct cost of every service it offers (*i.e.*, attributing the cost of non-usable space directly to every piece of equipment and every function that occupies space in a central office

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[9] According to Ameritech, 40 of the additional 50 square feet are associated with the provision of dedicated access, and the remaining 10 square feet are related to the building obstructions.

[10] *Id.* at 10.

[11] Moreover, by commercial standards, Ameritech's proposal to charge collocators based upon *twice* the amount of space they are actually occupying would be grossly unreasonable.

building), this approach will result in over-recovery of building-related overhead costs from collocators. In the absence of any documentation of Ameritech's overhead loadings, it is impossible to be certain what costs are recovered by these loadings. If Ameritech's practice is typical, however, the overhead loadings would include recovery of building-related expenses (such as taxes, repairs, janitorial service, electricity, etc.) that cannot be attributed directly to a particular service or network element. Thus, the costs of non-usable space should be recovered through the overhead loadings, and there is no justification for treating the same costs as part of the "direct" cost of the collocation node.

Moreover, by accounting for additional gross space and then applying a significant FDC factor not only to the floor space charge but to its other interconnection rate elements as well, Ameritech manages to recover twice for its overhead costs -- an option unavailable in traditional real estate practice.

Another example of this over-recovery of overhead comes in Ameritech's inclusion of "costs associated with managing the real estate portion of the physical collocation projects" in its nonrecurring Central Office Build Out charge of $39,015.06.[12] Since overhead loading factors by their nature include increments of cost associated with management and administration at all levels of Ameritech, the separate management cost added by Ameritech is almost certainly duplicative. Thus, Ameritech's effort to include overhead costs through both the application of a loading factor and also through the separate calculation of overhead costs associated with individual rate elements leads to excessive charges in the tariff and over-recovery of overhead.

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12 *Id.* at 18.

Nowhere in its Direct Case does Ameritech appear to explain the details of its use of FDC factors in any cost calculations. Ameritech's silence on this important issue should serve as a signal to the Commission of underlying problems in the use of FDC factors.[13] The Commission should not permit Ameritech to subsidize its operations at the expense of competing collocators through duplicative costs.[14] In order to halt this unlawful over-recovery, Ameritech should be forced to either eliminate its FDC overhead factor as applied to rate elements throughout the tariff, or alternatively, eliminate its space-loading process and management fee.

II. AMERITECH'S DC POWER CHARGES RECOVER EXCESSIVE OVERHEAD COSTS AND OVERCHARGE COLLOCATING COMPETITORS FOR POWER THEY DO NOT CONSUME

Ameritech's proposed charges for DC power service unlawfully benefit the ILEC in two respects. Specifically, Ameritech charges collocators for a substantial amount of power that they are not consuming, while simultaneously inflating its recoverable overhead as these costs are applied to the overstated DC power cost. In an undated letter included with Ameritech's Direct Case, Tony Leifel (presumably an Ameritech-employed engineer) states that "the costs for the electrical energy used should be based on the fuse size and the number of circuits required."[15] However, setting power charges on a "fuse size," or fuse amperage, basis artificially inflates collocators' power costs.

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[13] Indeed, it is unclear whether Ameritech applies the same FDC factor to its own services. WorldCom notes that a number of other incumbent local exchange carriers have ceased using the FDC methodology for other services, such as special access services.

[14] Ameritech's monthly floor space rate of $1050.85 per 100 square feet results in an annual rental fee of $126.10 per square foot, which is significantly higher than WorldCom pays to rent equipment space in other properties.

[15] Direct Case, at Attachment B.

Fuses must be sized to accommodate the *maximum* current that the collocated equipment can use, but this is often far more than actual power usage. For instance, one form of multiplexer that competitive local exchange carriers commonly deploy requires up to 30 amps to start its operation but quickly reverts down to and stabilizes at about 14 to 18 amps. (The start-up power is normally consumed only once, for a matter of seconds, since the equipment is designed to operate 24 hours per day.)

By setting DC power charges on the basis of fuse amperage rather than on the basis of energy consumed, Ameritech substantially overcharges competitors at a rate representing nearly twice the amount of power actually provided to and used by the collocators.[16] As a result, the overhead costs that Ameritech applies to these overstated DC power costs also become hyperinflated.

In lieu of a fuse amperage rate calculation, WorldCom suggests that the Commission mandate the use of a DC power rate based on the amp run rate to address the overstated power costs and related overhead costs. The run rate can be measured in one of two ways. Collocators could be required to certify that all equipment connected to the ILEC's facility runs at a specified amp basis (as is typically reflected on manufactures' specifications for the equipment). Alternatively, Ameritech could deploy power meters that measure the actual amp run rate. Either method would produce a more satisfactory result, ensuring that Ameritech does not recover from collocators any DC power charges over and above the actual DC power costs it incurs as a result of the collocators'

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[16] In an interoffice memorandum immediately following the Leifel letter in Attachment B, Michael R. Lang of Ameritech indicates that "the amount of air conditioning and air flow required for the customer's equipment will increase proportionately with the amount of DC circuits provided." Basing the heating, air conditioning, and ventilation systems on a fuse amperage basis rather than an actual power run-rate basis further inflates the collocator's payments for energy it is not consuming.

power usage.

III. AMERITECH'S DIRECT CASE RAISES CONSIDERABLE QUESTIONS REGARDING ITS INCLUSION OF INCOME TAXES IN CALCULATING THE COSTS OF PROVIDING COLLOCATION

WorldCom respectfully requests that the Commission carefully scrutinize Ameritech's inclusion of its income tax liability as an item in its cost studies. Ameritech is entitled to earn a reasonable return for its provision of space and services to collocating competitors. In passing through its income tax liability as a "direct" cost to be recovered and then marked up with an overhead factor, however, Ameritech essentially "grosses up" its profits at the expense of competing collocators who are already paying cost plus a reasonable profit for the use of services or space. The Commission should view income tax as an issue to be considered in the calculation of a reasonable profit margin rather than as a direct cost to the ILEC. Accordingly, Ameritech should be directed to remove its income tax as a line item on its cost sheet and instead compute its income tax liability as a component of reasonable profit.

Ameritech's application of an overhead loading factor to each rate element further demonstrates why the ILEC should not be allowed to include income tax on its cost sheets. Ostensibly, this loading factor of 1.58 (or 1.65) is used by Ameritech to somehow account for additional overhead expenses not captured in the cost calculation of each rate element.[17] For example, on its Central Office Floor Space cost sheet Ameritech calculates its total annual cost to be $7,462.55 -- including $1,406.87 of income tax.[18] Ameritech's total monthly cost therefore is

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[17] As noted above, however, Ameritech apparently does not provide any explanation of the composition of its FDC factor in its Direct Case.

[18] Direct Case of Ameritech, at Attachment B.

$636.88. Ameritech then applies its FDC factor of 1.65 to the monthly cost to arrive at a monthly floor space rate of $1,050.85. WorldCom objects to the application of an overhead loading factor to Ameritech's income tax liability as part of its direct costs. If the Commission does not require Ameritech to remove the income tax line item from its cost sheets, the Commission should at a minimum require Ameritech to explain in detail exactly how it incurs overhead costs with respect to its income tax liability.

Furthermore, if the Commission should decide that Ameritech can continue to include income tax liability as a direct cost for each rate element, the Commission should also require Ameritech to reduce its costs in accordance with any income tax benefits it might derive from providing collocation. Specifically, the Commission should require Ameritech to account for any depreciation deductions it takes with respect to improvements to its central office property in preparing for collocation. These deductions constitute cost savings that Ameritech should include in calculating the total direct costs of providing central office space. If Ameritech will include income tax liability as a direct cost of offering collocation services, it must also be made to adjust its costs downward for any income tax benefits it receives as a result of the collocator's presence.

IV. AMERITECH'S DUAL RISER COST SHEET SIGNIFICANTLY OVERSTATES ITS AVERAGE DUAL RISER OCCUPANCY PERCENTAGE

In its Direct Case, Ameritech estimates the "average [percentage] occupancy by customer" for its dual riser conduit at 75%.[19] WorldCom finds that this estimate is not credible and overstates substantially the actual average percentage of a dual riser conduit that a single customer will occupy,

[19] Direct Case of Ameritech, at Attachment B. WorldCom could not find any justification for this percentage estimate in the Ameritech cost studies.

with a corresponding inflation of Ameritech's costs. In WorldCom's experience, central office riser and cable tray systems are designed with large capacities (which is due to the large amounts of wiring found in these buildings). It is not credible that a single collocator could occupy 75% of the capacity of a riser duct. Ameritech's 75% occupancy estimate is completely unexplained and undocumented in its cost studies. This overestimation of the occupancy percentage will allow it to charge extremely high rates to competitors without any sound cost basis. The Commission should therefore reject Ameritech's overestimation of the occupancy percentage as unreasonable and direct the ILEC to revise its dual riser cost calculations to reflect more realistic and necessary levels of investment.

V. AMERITECH'S DEFENSE OF ITS PROPOSED LIMITATIONS OF LIABILITY MISSTATES THE POTENTIAL RISK TO THE PARTIES

Ameritech's tariff limits the ILEC's liability to actual direct damages for bodily injury or death and reimbursement of reasonable cost of repair or replacement of equipment, yet it requires interconnectors to indemnify Ameritech for any claims arising from the interconnector's use of the collocation space except in those cases where the loss results from Ameritech's sole negligence or willful misconduct.[20] In response to the Commission's concern about the reasonableness of these provisions, Ameritech argues that the relative risks borne by it and the collocator differ so significantly that the provisions are necessary to protect Ameritech against catastrophic loss.[21] Ameritech notes that its collocation rates would be much higher were it forced to bear the risk of such losses.

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[20] Ameritech Tariff F.C.C. No. 2, § 16.7.16.

[21] Direct Case of Ameritech, at 21-22.

Ameritech misconstrues the relative gravity of the risks to the parties. It seemingly considers only the effects of low-frequency, high-impact catastrophic loss in quantifying the risks. The primary example Ameritech offers is a hypothetical case in which "the collocator negligently burned down the [Central Office]."[22] Ameritech claims that the collocator "by its negligence can cause great harm with (relatively) less risk to itself."[23] More commonly, however, the accident that occurs involves the negligent provision of interconnection services or some other negligence in operations, which results only in a loss of service rather than physical or structural damage. For example, if a worker in or near a collocation node negligently cuts a cable or spills soda on a piece of electronic equipment, the damage will be suffered solely by the collocator and its customers, not Ameritech. Reimbursement of the reasonable costs of repair or replacement will not make the collocator whole.

Ameritech's tariff does not appropriately address such situations. It is simply not true in many common negligence cases that "any Ameritech negligence will likely harm itself in excess of any harm to the collocator."[24] Negligence in the provision of service or other operational functions is far more likely to cause significant harm to the collocator, who depends upon the ILEC in offering service to the collocator's end users. Therefore, the "disparate positions of the parties" that Ameritech cites for support of its limitation of liability provisions can also be cited as a criticism of the provisions. Requiring competitors to indemnify Ameritech for losses in cases of negligent service while protecting Ameritech from liability in the same sort of case will only have a negative

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22 *Id.* at 22.

23 *Id.*

24 *Id.*

impact on the competitor. In lieu of Ameritech's application of the tariff provisions to only the most extreme cases of loss, the Commission must consider both the low-frequency, high-risk cases and the high-frequency, lower-risk cases in reviewing the lawfulness of the provisions. Using such a balanced analysis, the Commission should find that the limitation of liability provisions unreasonably protect Ameritech at the expense of competitors, and reject the provisions accordingly.

Conclusion

For the foregoing reasons, the Commission should determine that certain rates, terms, and conditions of the proposed tariff are unjust and unreasonable. Accordingly, the Commission should direct Ameritech to revise and refile its expanded interconnection tariff, order Ameritech to provide supplemental cost support for its new tariff filing, and order Ameritech to pay refunds pursuant to the terms of the accounting order previously imposed in this docket.

Respectfully submitted,

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Dated: April 25, 1997

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing " Opposition of WorldCom, Inc. to Direct Case" will be served as indicated below on this the 25th day of April, 1997, on each of the persons listed below.

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